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8 Attorneys for Complainant

9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2006-110

13 JOCELYN ELIZABETH MACLEAN

P.O. Box 694

14 Spring Valley, CA 91977

A C C U S A T I O N

15 Vocational Nurse License No. VN 201038

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Bureau of Vocational Nursing and
22 Psychiatric Technicians, Department of Consumer Affairs.

23 2. On or about September 16, 2002, the Bureau of Vocational Nursing and
24 Psychiatric Technicians issued Vocational Nurse License Number VN 201038 to Jocelyn
25 Elizabeth MacLean (Respondent). The Vocational Nurse License expired on April 30, 2006, and
26 has not been renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Director of Consumer Affairs (Director) for
3 the Bureau of Vocational Nursing and Psychiatric Technicians, under the authority of the
4 following laws. All section references are to the Business and Professions Code unless
5 otherwise indicated.

6 **STATUTORY PROVISIONS**

7 4. Section 2875 of the Business and Professions Code (Code) provides, in pertinent
8 part, that the Board may discipline the holder of a vocational nurse license for any reason
9 provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

10 5. Section 22 of the Code states:

11 (a) "Board," used in any provision of this code, refers to the board in which
12 the administration of the provision is vested, and unless otherwise expressly
13 provided, shall include "bureau," "commission," "committee," "department,"
14 "division," "examining committee," "program," and "agency."

15 (b) Whenever the regulatory program of a board that is subject to review by
16 the Joint Legislative Sunset Review committee, as provided for in Division 1.2
17 (commencing with Section 473), is taken over by the department, that program
18 shall be designated as a "bureau."

19 6. Section 101.1, subdivision (b), of the Code states, in pertinent part:

20 (b)(1) In the event that any board, as defined in Section 477, becomes
21 inoperative or is repealed in accordance with the act that added this section, or by
22 subsequent acts, the Department of Consumer Affairs shall succeed to and is
23 vested with all the duties, powers, purposes, responsibilities and jurisdiction not
24 otherwise repealed or made inoperative of that board and its executive officer.

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1 7. Section 118, subdivision (b) of the Code provides, in pertinent part, that the
2 expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary
3 action during the period within which the license may be renewed, restored, reissued or
4 reinstated. Under section 2892.1 of the Code, the Bureau may renew an expired license at any
5 time within four years after the expiration.

6 8. Section 2878 of the Code states:

7 The Board may suspend or revoke a license issued under this chapter [the
8 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of
the following:

9 (a) Unprofessional conduct . . .

10 9. Section 2878.6 of the Code states:

11 A plea or verdict of guilty or a conviction following a plea of nolo
12 contendere made to a charge substantially related to the qualifications, functions
and duties of a licensed vocational nurse is deemed to be a conviction within the
13 meaning of this article. The board may order the license suspended or revoked, or
may decline to issue a license, when the time for appeal has elapsed, or the
14 judgment of conviction has been affirmed on appeal or when an order granting
probation is made suspending the imposition of sentence, irrespective of a
15 subsequent order under the provisions of Section 1203.4 of the Penal Code
allowing such person to withdraw his plea of guilty and to enter a plea of not
16 guilty, or setting aside the verdict of guilty, or dismissing the accusation,
information or indictment.

17 10. Section 492 of the Code states:

18 Notwithstanding any other provision of law, successful completion of any
19 diversion program under the Penal Code, or successful completion of an alcohol
and drug problem assessment program under Article 5 (commencing with section
20 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
any agency established under Division 2 ([Healing Arts] commencing with
21 Section 500) of this code, or any initiative act referred to in that division, from
taking disciplinary action against a licensee or from denying a license for
22 professional misconduct, notwithstanding that evidence of that misconduct may
be recorded in a record pertaining to an arrest.

23 This section shall not be construed to apply to any drug diversion program
24 operated by any agency established under Division 2 (commencing with Section
500) of this code, or any initiative act referred to in that division.

25 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request
26 the administrative law judge to direct a licensee found to have committed a violation or
27 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
28 and enforcement of the case.

12. California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. . . .

13. California Penal Code, section 1000, states, in pertinent part:

(a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for a violation of Section . . . , 11364, . . . of the Health and Safety Code, . . . , and it appears to the prosecuting attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant: . . .

14. California Penal Code, section 1000.1, subsection (d) states:

A defendant's plea of guilty pursuant to this chapter shall not constitute a conviction for any purpose unless a judgment of guilty is entered pursuant to Section 1000.3.

15. California Penal Code, section 1000.3 states, in pertinent part:

. . . If the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the criminal charge or charges shall be dismissed. . . .

16. California Penal Code, section 1000.4 states, in pertinent part:

(a) Any record filed with the Department of Justice shall indicate the disposition in those cases deferred pursuant to this chapter. Upon successful completion of a deferred entry of judgment program the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Possession of Controlled Substance**

3 **Paraphernalia on April 19, 2006)**

4 17. Respondent has subjected her license to disciplinary action under section 2878,
5 subdivision (a) of the Code. On or about April 19, 2006, Respondent's conduct was
6 unprofessional in that she possessed three glass pipes used for smoking methamphetamine, a
7 Schedule II controlled substance as designated by Health and Safety Code section 11055,
8 subdivision (d)(2), and a dangerous drug pursuant to Business and Professions Code section
9 4022. The facts and circumstances are as follows:

10 a. On or about the early morning hours of April 19, 2006, a San Diego
11 County Sheriff's Deputy was on patrol in the Lemon Grove area of San Diego. The deputy
12 observed Respondent in a Volkswagen Rabbit, driving very slowly and very close to the right
13 side of the road. The deputy followed Respondent as she entered onto westbound Highway 94, a
14 four-lane freeway. Respondent continued to drive at a slow speed, and kept driving over the lane
15 line on the right side of the road. Respondent exited Highway 94 at the Kenwood Drive off ramp
16 and headed north, back to Campo Road. This was leading back to the vicinity where the deputy
17 first observed her. Based on Respondent's actions, the deputy felt Respondent might be driving
18 under the influence. The deputy activated his emergency lights and pulled Respondent over.

19 b. Upon contact with the deputy, Respondent identified herself with an
20 expired driver's license. The vehicle's registration was also expired. The deputy noted that
21 Respondent's eyelids were droopy, her speech was very rapid and disconnected, and she could
22 not finish a sentence without changing to another topic. The deputy had Respondent perform
23 two Field Sobriety Tests (Rhombus Internal Clock Stand and Balance Test). Respondent
24 displayed symptoms of being under the influence of a central nervous system stimulant, but
25 because Respondent also had contradicting symptoms, the deputy was unable to determine if she
26 was under the influence of a controlled substance, or a combination of drugs. Respondent denied
27 using any drugs.

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1 c. Respondent consented to a search of her vehicle. Deputies who arrived to
2 assist found a plastic bag containing a glass pipe in Respondent's trunk. The pipe contained a
3 white, powdery residue. The deputy determined that the glass pipe was of a type commonly
4 used to smoke methamphetamine. Also in the trunk was a black leather bag containing several
5 papers, including a check, with Jocelyn's name on them, and two additional glass pipes rolled
6 into a sock. One of the pipes had the bulb end broken off. Also in the sock was a small amount
7 of what the deputy recognized as methamphetamine, however, the amount was too small to
8 weigh or test. Respondent was arrested, booked, and released.

9 d. On or about July 25, 2006, in the matter of *People of the State of*
10 *California v. Jocelyn MacLean*, in San Diego Superior Court case no. C260699, Respondent
11 pled guilty to violating Health and Safety Code section 11364, possession of paraphernalia used
12 for narcotics, a misdemeanor.

13 e. The prosecuting attorney, pursuant to Penal Code section 1000,
14 determined Respondent was eligible for the deferred entry of judgment program. As a result,
15 Respondent's judgment was deferred pending successful completion of the program.

16 f. On January 29, 2008, Respondent successfully completed all requirements
17 of the Penal Code section 1000 drug diversion program.

18 DISCIPLINARY CONSIDERATIONS

19 18. To determine the degree of discipline, if any, to be imposed on
20 Respondent, Complainant alleges that in a letter dated February 22, 2002, Barbara Miller,
21 Enforcement Analyst for the Board of Vocational Nursing and Psychiatric Technicians, advised
22 Respondent that the Board, after its investigation into Respondent's 1995 conviction for driving
23 under the influence, approved her application for a vocational nurse license. However,
24 Respondent was warned that future substantiated reports of similar behavior, or violations of the
25 laws or regulations governing the practice of a vocational nurse could result in disciplinary
26 action against Respondent's license.

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1 **PRAYER**

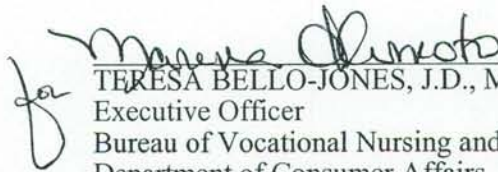
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

4 1. Revoking or suspending Vocational Nurse License No. VN 201038, issued to
5 Jocelyn Elizabeth MacLean;

6 2. Ordering Jocelyn Elizabeth MacLean to pay the Bureau of Vocational Nursing
7 and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this
8 case, pursuant to Business and Professions Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.
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11 DATED: September 19, 2008
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14  TERESA BELLO-JONES, J.D., M.S.N., R.N.
15 Executive Officer
16 Bureau of Vocational Nursing and Psychiatric Technicians
17 Department of Consumer Affairs
18 State of California
19 Complainant
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